The California District Court of Appeal held that the piece of paper bag was the product of an illegal search, 234 Cal. App. 2d 587, 44 Cal. Rptr. 483. First, the state court held that the State could not rely on the subsequent forfeiture to justify the search. It realistically noted that the State's title could not relate back to the time of the seizure until after a judicial declaration of forfeiture. Since the forfeiture judgment was not entered until after petitioner's trial, the State could not rely on it to justify the search. *Id.*, at 596–597, 44 Cal. Rptr., at 489–490. Second, the court held that although the automobile was in the lawful custody of the officers at the time of the search, § 11611 of the Health and Safety Code did not authorize the officers to search the car. *Id.*, at 597, 44 Cal. Rptr., at 490. Since the search was not pursuant to a warrant, and since it was not incidental to petitioner's arrest, it was illegal.

Hence the fact that the car was being held "as evidence" did not as a matter of state law give the officers more dominion over it than the officers in *Preston* v. *United States*, 376 U. S. 364, had over the car in their custody.

In *Preston*, petitioner and others were arrested for vagrancy after they failed to give an acceptable explanation of their presence in a parked car late at night. They were taken to the police station, and the car was taken first to the station and then to a garage. After the men were booked, police officers went to the garage, searched the car without a warrant, and found evidence incriminating petitioner and the others of conspiracy to rob a federally insured bank.

In the instant case petitioner was arrested, his car taken to a garage and searched a week after his arrest, likewise without a warrant. As in *Preston*, the search cannot be justified as incidental to a lawful arrest. Nor can this case be distinguished from *Preston* on the ground

that one car was lawfully in police custody and the other not. In *Preston*, the fact that the car was in lawful police custody did not legalize the search without a warrant. Since the California court held that the Health and Safety Code did not authorize a search of a car impounded under its provisions, the case is on all fours with *Preston* so far as police custody is concerned. If custody of the car is relevant at all, it militates against the reasonableness of the search. As the Court said in *Preston:* "[S]ince the men were under arrest at the police station and the car was in police custody at a garage, [there was no] danger that the car would be moved out of the locality or jurisdiction." 376 U. S., at 368. Moreover, the claim that the search was not illegal because the car had been forfeited to the State is foreclosed by the state court's holding that, under the circumstances, the forfeiture could not relate back to the date of the seizure. The state court's interpretation of its own statute will not be upset by this Court. *Guaranty Trust* v. *Blodgett*, 287 U. S. 509.

To repeat, this case is on all fours with *Preston*. For in each the search was of a car "validly" held by officers, to use the Court's expression. *Preston*, of course, was a federal case, while this is a state case. But the Fourth Amendment with all its sanctions applies to the States as well as to the Federal Government. *Mapp* v. *Ohio*, 367 U. S. 643.

I see only two ways to explain the Court's opinion. One is that it overrules *Preston sub silentio*. There are those who do not like *Preston*. I think, however, it states a healthy rule, protecting the zone of privacy of the individual as prescribed by the Fourth Amendment. These days police often take possession of cars, towing them away when improperly parked. Those cars are "validly" held by the police. Yet if they can be searched without a warrant, the precincts of the individual are

invaded and the barriers to privacy breached. Unless the search is incident to an arrest, I would insist that the police obtain a warrant to search a man's car just as they must do when they search his home.

If the present decision does not overrule *Preston*, it can perhaps be rationalized on one other ground. There is the view that when the Bill of Rights is applied to the States by reason of the Fourteenth Amendment, a watered-down version is used. In that view "due process" qualifies all provisions of the Bill of Rights. Today's decision is perhaps explicable in those terms. But I also reject that view. "Unreasonable searches and seizures" as used in the Fourth Amendment, "self-incrimination" as used in the Fifth, "freedom of speech" as used in the First, and the like, mean the same in a state as in a federal case.[1]

[1] That view was expressly approved by the Court in *Malloy v. Hogan*, 378 U. S. 1, 10-11.